92-1686

No. _____

In The

Supreme Court of the United States

October Term, 1992

NIDIA CAMPOS,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

WHETHER MERE PROPOSALS TO AN UNDERCOVER AGENT REQUIRING ACCEPTANCE BY THE AGENT BEFORE ACTIVATION CONSTITUTE A CONSPIRACY WHEN THE REQUIRED ACCEPTANCE IS NOT FORTHCOMING AND THE PROPOSALS ARE NEVER PUT IN EFFECT.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents ii

Table of Authorities iii

Opinions Below 2

Jurisdiction 2

Statutes Involved 2

Statement of the Case 3

Reasons Why The Writ Should Be Granted 10

MERE PROPOSALS TO AN UNDERCOVER AGENT REQUIRING ACCEPTANCE BY THE AGENT BEFORE ACTIVATION DOES NOT CONSTITUTE A CONSPIRACY WHEN THE REQUIRED ACCEPTANCE IS NOT FORTHCOMING AND THE PROPOSALS ARE NEVER PUT IN EFFECT

CONCLUSION 15

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

United States v. Melchor-Lopez, 627 F.2d 886 (9th Cir. 1980) 10, 11, 12, 13

United States v. Jones, 765 F.2d 996 (11th Cir. 1985) .11, 13

Yates v. United States, 354 U.S. 298 (1957) 14

STATUTES

18 U.S.C. § 371 ..... 1, 2, 3

18 U.S.C. § 1956 2

No. _____

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Nidia Campos petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit which affirmed the judgment and sentence of the United States District Court for the Eastern District of New York (Carol B. Amon, D.J.). Petitioner was convicted after a second jury trial of one count of conspiracy to engage in acts of money laundering in violation of 18 U.S.C. §§ 371 and 1956(a)(1)(B)(i), and was sentenced to a term of 54 months of imprisonment and to a term of supervised release of three years.

OPINIONS BELOW

The judgment of the Court of Appeals was issued on February 19, 1993, upon the issuance of its opinion, and is reproduced in the Appendix to this Petition at A-1. The Court of Appeals' opinion is not yet officially reported.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

18 U.S.C. § 371 provides in pertinent part,

> If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each such person shall be find not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. § 1956 provides in pertinent part,

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity –
>
> * * *
>
> (B) knowing that the transaction is designed in whole or in part – (i) to conceal or disguise the nature, the location, the source, the ownership,

> or the control of the proceeds of specified unlawful activity
>
> * * *
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

STATEMENT OF THE CASE

Petitioner, her husband Mario Campos, Edgar Vargas and Jose Jairo Rincon-Maya were initially indicted by a grand jury in the Eastern District of New York for conspiring to distribute, and to possess with intent to distribute, in excess of five kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. The initial indictment also charged Vargas alone with substantive possession of more than five kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). A later, superseding indictment realleged the same first two counts but added a charge of conspiracy to engage in laundering of monetary instruments in violation of 18 U.S.C. §§ 371 and 1956 (a)(1)(B)(i). For reasons that will be discussed more fully below, it is important to note that the money laundering conspiracy was alleged to have occurred between approximately June 10, 1989 and August 9, 1989. Mario Campos alone was also charged with using a telephone to facilitate a narcotics offense, in violation of 21 U.S.C. § 843(b).

At a joint trial of all defendants, Mario Campos and Vargas were found guilty of all the charges.[1] The jury could not reach a verdict with respect to Petitioner and co-defendant Rincon-Maya.[2] At her second trial, a jury acquitted Petitioner of the narcotics conspiracy, but found her guilty of conspiring to engage in money laundering. Petitioner was thereafter sentenced to 54 months of imprisonment and a three year term of supervised release.[3]

At Petitioner's second trial, Robert Matos, a Special Agent with the Drug Enforcement Administration testified that he began his investigation in this case on June 9, 1989, when, through a paid confidential informant he was introduced to Edgar Vargas (67).[4] On that occasion, Matos, who was posing as a cocaine smuggler, met with Vargas and the informant in a restaurant in Queens, New York. At the meeting, Vargas told Matos he wanted to purchase 25 kilograms of cocaine (70). Matos replied that he was, at the moment "tapped out", but that when he had cocaine he never sold less than 500 kilos at a time,

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[1] Mario Campos was sentenced to a ten year prison term and is presently serving his sentence. Vargas was sentenced to a 188 month term of imprisonment, which he is currently serving.

[2] Rincon-Maya subsequently pleaded guilty to a lesser, substantive cocaine distribution charge, for which he received a sentence of 81 months' imprisonment.

[3] Mrs. Campos has been in custody since her arrest in August of 1989. As of the filing of this petition she is a few months short of having served her sentence.

[4] Numerical references in parentheses are to the pagination of the trial minutes.

and that he normally transported 500 kilos from Colombia and Panama every month and a half (70). After Vargas assured Matos that he was interested in buying a hundred kilos, and after Matos informed Vargas that he would insist on advance payment in full for any drugs he provided, the subject of the discussion shifted to money laundering.[5]

Vargas stated that he had an "Hispanic associate" who owned a bar, and who was involved in money laundering (71). Matos explained that he used the expression "money laundering" to mean "like hiding drug proceeds" (71). Vargas went on to explain that the man he knew could convert bills in small denominations into larger denominations, so that the money would be easier to conceal and transport (72; 76). Vargas also stated that he had an Hispanic female associate "who launders money to other countries" (77). When Matos expressed an interest in such services, Vargas said that he could arrange for a meeting with the Hispanic female (77).

During a subsequent meeting between Matos and Vargas, Vargas stated that he had spoken to "his associates", the Hispanic male and female, and that they were interested in buying cocaine that Matos was smuggling into the country (80). Later the same day, June 21, 1989, Matos and Vargas travelled to and met at McCabe's Bar in Queens. At the bar, Vargas introduced Matos to Mario Campos, and Mario Campos told him that Vargas had mentioned that Matos was interested in having money laundered (88). Campos proceeded to tell Matos that he

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[5] Inasmuch as this petition concerns only Petitioner's conviction for the money laundering conspiracy, we recite only the facts pertinent to that offense.

could convert small bills into larger denominations, and that he had already laundered about $400,000.00 per week for Vargas in this fashion (89). When Matos told Campos that he did not need to convert money into large denominations, and that what he really wanted was to send money to another country, Mr. Campos stated that his wife could provide that service (89). Campos then told Matos that he was going to make a telephone call to his wife to let her know that Matos and Vargas were "going over there to speak to her" (90). Upon returning from the phone, Campos confirmed that he had spoken to his wife, and that she would be waiting for them at her realty agency (90).

Vargas and Matos travelled to the Costa Rica real estate office in Queens, where they met Petitioner, the owner of the agency. At that juncture, Petitioner told Matos that Vargas had mentioned that he might need her services to lauder money (92). When she asked how much money Matos was talking about, he told her that he expected to have $500,000.00 per week (92). She replied by explaining the different services that she could provide, one being the creation of non-existent companies and false documents which assertedly would permit him "to spend money without detection of the police" (92). While she was explaining this service further, she allegedly showed Matos a pamphlet that depicted a private house in New Jersey which Petitioner claimed was worth over one million dollars. She told him that she could purchase such a house for him and "put them in different names" (93). Matos stated that he was not interested in that service, but that he wanted money transferred to Spain. Ms. Campos stated that she could do that,

but that she would charge a ten per cent fee, which Matos stated was too much (93). She then told Matos that she would speak to an associate to see if she could lower the ten per cent figure (93). The topic of discussion then shifted to cocaine, without having reached any agreement about the transfer of money.

On July 6, 1989, Matos met with Vargas at the Charmont Restaurant in Queens, and during an ensuing conversation Vargas mentioned, in passing, that "Nidia" would not go lower than ten per cent for sending money to Spain (101). Matos once again stated that ten per cent was too high (102).[6]

On July 14th, Matos once again met with Vargas. After some further discussions about obtaining cocaine. Matos again brought up the subject of the ten per cent fee or commission, asking whether "Nidia" wants to lower the "points" (140). Matos then mentioned to Vargas, that he had a female associate who was interested in transferring funds – supposedly One Million Dollars – to Santo Domingo (140). On August 1st, Vargas and Matos had yet another meeting, after which they once again travelled to Costs Rica Realty. Petitioner greeted Matos and introduced him to "Hector". Hector and Matos moved into another office, closed the door, and discussed amongst themselves, a future drug deal. Hector stated that he was Nidia's partner, but they were unable to reach any agreement about doing a cocaine deal at that time (181-182).

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[6] Matos attempted to record his July 6th meeting with Vargas, but there was too much background noise, and the pertinent portions of their conversation were not preserved.

By August 9, 1989, Matos had succeeded in preparing for a 50-kilo transaction with Vargas. When they met on that day, Vargas got into Matos' vehicle and told him that the money was in a blue Oldsmobile that had been parked nearby. Vargas went to get it, and returned with a blue shopping bag (194). Inside the bag the agents later found bundles of money wrapped in rubberbands (195). Matos then handed Vargas the keys to an undercover DEA vehicle that had also been parked in the vicinity. As Vargas approached the DEA vehicle in which he expected to find the cocaine he had just paid for, the agents placed him under arrest (200). Using Vargas whom they had taken into custody, the agents had him place a telephone call to the intended recipient of the other half of the 50 kilos; Vargas told the person – a man – where the car with the drugs had been parked (204). Shortly afterwards, they returned to the area where the DEA car had been parked, and observed a man, later identified as Rincon-Maya, approaching. When he came closer to claim his share of the drugs, he too was placed under arrest (206-207; 226).

Later that same day, at night, the agents went to Costa Rica Realty where they found and arrested Petitioner whom they believed to have had a part in the 50 kilogram deal (231-232). After obtaining a search warrant for the premises, they searched and seized various items, including a sum of currency – about $27,875.00 in mixed denominations – in a locked safe, an old money counter, a mobile telephone, and some business cards (323-238; 278; 752; 1042). The agents found neither drugs, nor weapons during their search (782).

On cross-examination, Matos recounted how when he had met Vargas on June 20, 1989, Vargas had told him

that he knew an Hispanic man who owned a bar and who could change money or "clean the money" (304-305). He also confirmed that at least according to him, Vargas had also spoken about an Hispanic woman who could send money abroad (306). Vargas never indicated that the men and the women were in any way related, but said that they worked together (307). Matos freely conceded that the money counter that had been seized from the Costa Rica Realty premises was "old equipment" (353). He also noted that no faxes or other records of wire transfers for funds had been seized at the Costa Rica Realty office (372). He also testified that he knew that in the past, when Vargas himself had wanted to send money out of the country, he had done so on his own, sending it by boat and Petitioner had no involvement whatsoever (379-381).

Matos also maintained that Nidia Campos had told him that he should discuss anything about drugs or about sending money with Vargas, and that Vargas was her "spokesman" (380; 386-388) or middleman (508). Matos conceded that as part of his undercover role, he had told Vargas that he was married and that he lived in New Jersey (479). During his subsequent meeting with Petitioner at the realty office, Matos had a discussion about a private home in Franklin Lakes, New Jersey (480). It was at this point that, at least according to Matos, petitioner produced a brochure or pamphlet depicting a large private home in New Jersey, and commented that the house was the type of house she could use to launder money (480; 483). Matos also admitted that he had never actually told Petitioner where the money that he claimed to have had on hand had come from or where it was located, but

he gratuitously offered to speculate that she "knew" (484).

Matos acknowledged that he had investigated the various documents that had been seized from Petitioner's office, and that there was nothing among any of the papers that showed or suggested that she had ever fraudulently transferred real property as part of any kind of scheme to conceal the source or ownership of the funds used to acquire the property (507).

Matos also testified that although during one of his meetings with Vargas, Vargas had said that he should never bring money that he wanted sent out of the country to Campos at her office, but only to her home (510), he never at any time actually tried to bring money to her anywhere (512-515).[7]

REASONS WHY THE WRIT SHOULD BE GRANTED

MERE PROPOSALS TO AN UNDERCOVER AGENT REQUIRING ACCEPTANCE BY THE AGENT BEFORE ACTIVATION DOES NOT CONSTITUTE A CONSPIRACY WHEN THE REQUIRED ACCEPTANCE IS NOT FORTHCOMING AND THE PROPOSALS ARE NEVER PUT IN EFFECT.

In *United States v. Melchor-Lopez*, 627 F.2d 886 (1980), the Ninth Circuit held that exploratory and inconclusive discussions about an illegal venture do not constitute a

[7] Matos sought to account for the fact that he had never approached Nidia Campos with money by claiming that the DEA had not authorized him to do so.

conspiracy. "The law requires more than a conspiracy to attempt to arrange a purchase; it requires an agreement to carry out an illegal act." Ibid, at 892.

The Eleventh Circuit has expressed a similar view in *United States v. Jones*, 765 F.2d 996, 1003 (1985):

> We cannot say the mere submission of proposals such as we have here, with pre-conditions not met, is a criminal conspiracy without more. The Melchor-Lopez case holds that a partial acceptance of proposals, but stating a precondition not met, is not a conspiracy. We think this is sound and it follows that the mere submission of proposals, incorporating a precondition not met, is not a conspiracy either when the circumstances do not justify an inference of fact that the "agreement" survives the rebuff.

That is precisely the scenario in this case. The superseding indictment filed by the Government clearly and unambiguously alleged that the conspiracy to engage in acts of money laundering was in existence from approximately June 10, 1989 until August 9, 1989. The prosecution chose this definite period advisedly because it fairly and accurately represented the time span during which Special Agent Matos met with the various defendants, assertedly to sell them cocaine and to determine whether they would agree to launder the proceeds of his narcotics activity. Indeed, the two dates correspond precisely with the dates that Matos began his undercover work, June 9th, and with the date on which the defendants were arrested, August 9th. Moreover, each of the four overt

acts charged in the indictment are alleged to have occurred on a single day within the period.[8]

Thus, these temporal limits identify the conspiracy as having the specific objective of laundering money for Agent Matos. But a fair consideration of the evidence, even viewed in a light most favorable to the government, shows at most that Petitioner and her alleged co-conspirators – her husband and Vargas – did no more than propose to Matos various methods of money laundering, each of which was rejected by Matos, either because he wanted a different form of the service or because the price quoted was too high. Thus, the purported scheme never went beyond the discussion stage.

Although Petitioner acknowledged that she knew how to send money out of the country, she never actually agreed that she would do so on behalf of Matos. Indeed, the only rational inference to be drawn from the trial facts is precisely the opposite one, that there never was conspiratorial agreement because Matos turned down both the method – the purchase of real estate in someone else's name – and the fee that Petitioner had allegedly proposed – ten percent. Thus, under the principles expressed in *Melchor-Lopez* and *Jones*, the inconclusive discussions never ripened into a conspiracy.

---

[8] The overt acts alleged under count three of the indictment were that on or about June 21, 1989: 1) Vargas "arranged a meeting" between Matos and Mario Campos; 2) Mario Campos met with Matos and discussed money laundering; 3) Nidia Campos met with Matos and discussed money laundering; and 4) Nidia Campos placed a telephone call to an associate to discuss money laundering for Matos.

The Court of Appeals' treatment of this issue implicitly rejects the *Melchor-Lopez* and *Jones* rationale by focusing exclusively on the discussions as evidence of the conspiracy:

> Vargas *described* Mario as his associate and introduced Mario to Matos in connection with the latter's professed desire to launder money. Mario *confirmed* Vargas' earlier representation as to Mario's fee. The evidence was ample that Vargas was a narcotics dealer, and Mario *said* that he regularly laundered $400,000 a week for Vargas.
>
> * * *
>
> Vargas also *described* Nidia as his associate. Nidia *confirmed* that she had *discussed* Matos' money-laundering needs with Vargas, and she *advised* Matos that Vargas would thereafter serve as her representative in dealing with Matos. Further, Nidia *stated* that before she could lower the fee for sending money abroad, she had to *consult* with another associate, whom she *telephoned* in Matos' presence. Finally, Mario's phone call to Nidia permitted the inference that he was referring to her the large-bill conversions that he preferred not to handle.

Appendix at A-12 (Emphasis added)

But the conversations referred to by the Court of Appeals, like those had among the purported conspirators in *Melchor-Lopez* and *Jones*, do not prove agreement, only an attempt to reach one. As the Court pointedly observed in *Jones*, "Of course the law could be written to punish one who seriously contemplated participating in a

[money laundering] enterprise, but it has not yet done so". 765 F.2d at 996.

But even assuming *arguendo* that the various meetings and discussions constituted evidence of the formation of the conspiracy as charged in the indictment, under a §371 conspiracy, as this was, the existence of the illegal agreement is not sufficient; an overt act "to effect the objects of the conspiracy" is required. Here, each of the overt acts charged in the indictment was a step in the *formation*, not execution of the conspiracy. See footnote 6, supra.

In *Yates v. United Sates*, 354 U.S. 298, 334 (1957), this Court stated that a principal reason for the overt act requirement in a conspiracy prosecution "is simply to manifest that the conspiracy is at work and is neither a project still resting solely in the minds of the conspirators nor a fully completed operation no longer in existence." A fortiori, then, conduct necessary to the formation of the conspiracy cannot at once constitute an overt act in furtherance thereof.

Yet, that is the clear import of the Court of Appeals' ruling here. The discussions about sending money abroad, and at what price, and Petitioner's expression of interest through Vargas and/or Mario Campos, in assisting Matos, at most established the formation of the conspiracy, but since Matos rebuffed the various offers no further action was taken by Petitioner, or anyone else, hence the absence of an overt act.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, NY
April 19, 1993

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 385, 572, 573 – August Term, 1992

(Argued: November 13, 1992
Decided: February 19, 1993)

Docket Nos. 92-1094, -1252, -1258

UNITED STATES OF AMERICA,

Appellee.

– v. –

EDGAR VARGAS, NIDIA CAMPOS, and MARIO CAMPOS,

Defendants-Appellants.

Before:

NEWMAN, KEARSE, and CARDAMONE,

Circuit Judges.

Appeals from judgments of the United States District Court for the Eastern District of New York, Carol Bagley Amon, *Judge*, convicting defendants of narcotics-related offenses, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), 846, and money-laundering offenses, in violation of 18 U.S.C. §§ 371, 1956(a)(1)(B)(i).

Affirmed.

LINDA B. LAKHDHIR, Assistant United States Attorney, Brooklyn, New York (Andrew J. Maloney, United States Attorney for the Eastern

District of New York, Susan Corkery, Assistant United States Attorney, Brooklyn, New York, on the brief), *for Appellee.*

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MARTIN L. SCHMUKLER, New York, New York (Roger J. Schwarz, New York, New York, on the brief), *for Defendant-Appellant Nidia Campos.*

DOMENICK J. PORCO, New York, New York (Barry Asness, New York, New York, on the brief), *for Defendant-Appellant Mario Campos.*

KEARSE, *Circuit Judge:*

Defendants Edgar Vargas, Nidia Campos, and Mario Campos appeal from final judgments of the United States District Court for the Eastern District of New York convicting them, following a jury trial before Carol Bagley Amon, *Judge,* of narcotics-related and money-laundering offenses. All three defendants were convicted of conspiring to conduct a financial transaction involving the proceeds of narcotics trafficking activity, in violation of 18 U.S.C. §§ 371 and 1956(a)(1)(B)(i) (1988). In addition, Vargas was convicted of possessing and conspiring to possess cocaine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (1988); and Mario Campos was convicted of conspiring to possess cocaine with intent to distribute, in violation of 21 U.S.C. § 846, and of using a communication facility to facilitate the commission of a narcotics trafficking offense, in violation of 21 U.S.C. § 843(b) (1988). Vargas was sentenced principally to a total of 188 months' imprisonment, to be followed by

a total of five years of supervised release. Nidia Campos was sentenced principally to 54 months' imprisonment, to be followed by three years of supervised release. Mario Campos was sentenced principally to a total of 120 months' imprisonment, to be followed by a total of five years of supervised release. On appeal, Vargas challenges the calculation of his sentence under the federal Sentencing Guidelines ("Guidelines"); the other defendants contend chiefly that the evidence was insufficient to support their convictions. For the reasons below, we conclude that their contentions are without merit.

I. BACKGROUND

The events at issue here, all of which took place in 1989, were the subject of two trials. The government's evidence was presented principally through the testimony of Drug Enforcement Administration ("DEA") agents, recorded conversations, and telephone records. Taken in the light most favorable to the government, the evidence at the first trial was as follows.

On June 9, while acting in an undercover capacity, DEA Special Agent Robert Matos was introduced to Vargas, who said he was interested in buying 25 kilograms of cocaine at a price of $12,000 per kilo. Matos responded that he had no cocaine at the moment but that he imported 500 kilograms of cocaine every 1 1/2 months; he also said that he did not sell in lots of less than 50 kilograms. Vargas agreed to purchase 50 kilos, with prospects for more in the future.

Vargas and Matos also discussed money laundering. Vargas described one of his associates as a Hispanic man

who owned a bar and who could exchange small-denomination bills for $100 bills for ease of transport and concealment. Matos said he wanted to send his money to Spain, and Vargas said he had another associate, a woman, who could launder money by sending it to foreign countries. He told Matos that the male associate's fee for changing small bills into large ones was 7% and that Matos would have to meet the female associate and discuss what percentage she would charge for sending money abroad. Vargas said that his associates could launder as much money as Matos wished and that he would speak to them about the cocaine and the money laundering.

On June 20, Vargas told Matos that Vargas's associates wanted to buy all 500 kilograms of Matos's imminent cocaine shipment. However, they wanted to pay for half of it on delivery and for the other half 15-20 days after delivery. Matos responded that since this would be the first time he had dealt with Vargas, he would require payment in full on delivery. Vargas said he would speak again with his associates. Vargas also said he wanted to introduce Matos to his male associate the next day, and that Matos "could speak to him about the five hundred kilos of cocaine and speak to him about laundering the money, sending money to Spain, and find out the percentage they were going to charge."

On the evening of June 21, Vargas took Matos to a bar in Queens, New York, and introduced him to Mario Campos ("Mario"). Mario said Vargas had told him that Matos had a large amount of money to be laundered. Mario said he could change a half-million dollars from small bills to $100 bills; he confirmed that his fee would

be 7% of the amount changed. He said he routinely changed $400,000 a week for Vargas. Matos told Mario that he did not want the money changed into larger bills but rather wanted it sent to another country. Mario said that the person who performed that service was his wife.

Mario said Vargas had also told him that Matos imported cocaine, and he asked how much Matos could bring in. When Matos responded that he brought in 500 kilograms every 1 1/2 months, Mario suggested that Matos speak to Mario's wife, stating that she was "tapped out" of cocaine and was interested in purchasing large quantities. Mario said he would call his wife and tell her that Matos wanted to speak with her. Mario then went to the other side of the bar; when he returned he said he had spoken to his wife, Nidia, and that Matos and Vargas should go speak with her.

Matos and Vargas promptly left the bar and drove to the offices of Costa Rica Realty, where they met privately with Nidia Campos ("Nidia"). Nidia said Vargas had told her that Matos was a smuggler of large quantities of cocaine and needed her services to launder the proceeds of his drug sales. She asked how much money he needed laundered and said she could provide a variety of services, including setting up fictitious companies to provide a front for his profits, purchasing houses with documentation falsified to hide his ownership, and transferring money to foreign countries. For the last service, Nidia said the fee would be 10% of the cash transferred. Matos responded that he wanted to have his money transferred to Spain but that 10% was too high. Nidia promptly called another of her associates to arrange to discuss later whether the percentage could be lowered.

Nidia also asked Matos how much cocaine he could import; when told 500 kilos every month or month and a half, she inquired as to the price. Matos quoted her a price of $10,000 per kilo for 500 kilos, or a total of $5 million. Nidia responded that that was a good price and that she was interested in making the purchase. She said Vargas would be the intermediary between herself and Matos, relaying information with regard to the money laundering and the cocaine purchase. She would have Vargas let Matos know whether she would be able to lower the 10% fee for transferring money. As the two men left the realty office, Vargas told Matos that Nidia could purchase the 500 kilos easily.

On July 6, Vargas advised Matos that he had spoken to Nidia and that she could not lower the 10% money-transfer fee. Vargas also said that Nidia wanted to buy the 500 kilos of cocaine but had only $3 million. Vargas suggested that Matos deliver the 500 kilos, receive the $3 million immediately, and receive the remaining $2 million within 15 days. Matos declined to accept less than full payment on delivery.

In late July, Vargas reported that he had two buyers who would be dividing the 500 kilos of cocaine. He also said that if the second buyer backed out, Nidia would take the entire amount. In arranging for delivery, Vargas said that one of Nidia's associates would examine the shipment to verify its purity; he also asked that the cocaine be delivered in a vehicle Vargas could use to take it to the two buyers. Vargas tried again, still unsuccessfully, to persuade Matos to accept less than the full purchase price on delivery, this time telling him that Nidia was often fronted large amounts of cocaine by the

Cali cartel in Colombia. A few days later, Vargas advised Matos that the second buyer had withdrawn but that Nidia would purchase all of the cocaine. Later that day, Matos met Vargas and showed him a van containing 500 kilograms of cocaine. Vargas examined it, declared it satisfactory, and went to see Nidia. He reported back, however, that Nidia now wanted the entire shipment on consignment. He explained that Nidia's associate had negotiated the purchase of 1,000 kilograms of cocaine from another source and that Nidia needed her cash for security for that transaction. Matos refused to deliver the cocaine without receiving payment. On the following day, Matos spoke with both Nidia and her associate, "Hector," who tried to persuade Matos to deliver the cocaine and keep Hector or Vargas as a hostage until payment was received. Matos declined.

In the days that followed, Vargas tried to reach Matos, who refused to return his calls. The two met on August 7, and Matos said that he had only 300 kilograms of cocaine left. Vargas said that Nidia would purchase 25 kilos every three days until Matos's supply was exhausted; Vargas said his second buyer also wanted 25 kilos at the time of Nidia's first purchase. Thus, Vargas would take 50 kilos in the first delivery, for which he would bring $500,000.

On August 9, Vargas met Matos and gave him bags containing a total of approximately $295,000. Matos directed Vargas to a car in which one kilogram of cocaine had been placed, telling Vargas that it contained the 50 kilos. After Vargas took the keys, entered the car, and put the keys in the ignition, he was arrested.

Vargas, Nidia, and Mario were charged with conspiring to launder the proceeds of narcotics trafficking activity, in violation of 18 U.S.C. §§ 371 and 1956(a)(1)(B)(i), and with conspiring to possess cocaine with intent to distribute it, in violation of 21 U.S.C. § 846. In addition, Vargas was charged with possessing cocaine with intent to distribute it, in violation of 21 U.S.C. § 841(a)(1); and Mario Campos was charged with using a communication facility to facilitate the commission of a narcotics trafficking offense, in violation of 21 U.S.C. § 843(b). At the first trial, Vargas and Mario were convicted on all of the counts with which they were charged; the jury was unable to reach a verdict as to Nidia. Thereafter, Nidia was retried, with the government presenting, *inter alia*, all of the above evidence of the events involving Nidia. The jury at the retrial found Nidia guilty of the money-laundering conspiracy but not guilty of the narcotics conspiracy.

Defendants were sentenced as indicated above, and these appeals followed.

II. DISCUSSION

On appeal, Mario and Nidia challenge the sufficiency of the evidence to convict them. Vargas challenges the calculation of his sentence. None of their contentions has merit. Only Mario's challenge to the sufficiency of the evidence to convict him on the narcotics conspiracy count warrants extended discussion.

A. *Sufficiency of the Evidence To Convict Mario of Narcotics Conspiracy*

In order to prove a conspiracy, the government "need not present evidence of an explicit agreement; proof of a tacit understanding will suffice." *United States v. Skowronski*, 968 F.2d 242, 247 (2d Cir. 1992); *see United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1191 (2d Cir.), *cert. denied*, 493 U.S. 933 (1989). A conviction for conspiracy must be upheld if there was evidence from which the jury could reasonably have inferred that the defendant knew of the conspiracy charged in the indictment and that he "associat[ed] himself with the venture in some fashion, 'participat[ed] in it as something that he wish[ed] to bring about,' or '[sought] by his action to make it succeed.' " *United States v. Johnson*, 513 F.2d 819, 823 (2d Cir. 1975) (conspiracy conviction reversed in absence of evidence that defendant's presence in automobile, owned and operated by another to import narcotics, reflected other than simply a desire to accompany friend on trip) (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938)); *see, e.g., United States v. Maldonado-Rivera*, 922 F.2d 934, 963 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 2858 (1991); *United States v. Sanchez Solis*, 882 F.2d 693, 696 (2d Cir. 1989); *United States v. Gaviria*, 740 F.2d 174, 183 (2d Cir. 1984). A defendant's knowledge of the conspiracy and his participation in it with criminal intent may be established through circumstantial evidence. *See, e.g., United States v. Skowronski*, 968 F.2d at 247; *United States v. Villegas*, 899 F.2d 1324, 1338-39 (2d Cir.), *cert. denied*, 111 S. Ct. 535 (1990); *United States v. Tutino*, 883 F.2d 1125, 1129 (2d Cir. 1989), *cert. denied*, 493 U.S. 1081 (1990).

In reviewing a challenge to the sufficiency of the evidence to support a conviction, we must credit every inference that could have been drawn in the government's favor, *see, e.g., United States v. Bagaric*, 706 F.2d 42, 64 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983); *United States v. Carson*, 702 F.2d 351, 361 (2d Cir.), *cert. denied*, 462 U.S. 1108 (1983), and we must affirm the conviction so long as, from the inferences reasonably drawn, the jury might fairly have concluded guilt beyond a reasonable doubt, *see, e.g., United States v. Buck*, 804 F.2d 239, 242 (2d Cir. 1986); *United States v. Taylor*, 464 F.2d 240, 244-45 (2d Cir. 1972). The conviction must be upheld if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original).

Mario contends that all he did was make one telephone call to Nidia and that that was insufficient to support his conviction on the narcotics conspiracy count. He relies principally on *United States v. Tyler*, 758 F.2d 66 (2d Cir. 1985), and *United States v. Hysohion*, 448 F.2d 343 (2d Cir. 1971), arguing that merely helping a willing buyer to make contact with a willing seller does not establish a conspiracy. Though the legal premise is sound, it does not govern the present case. In *Tyler*, we reversed the conspiracy conviction of the defendant Tyler, who had introduced an undercover police officer, Baxter, to one Bennett, who in turn sold Baxter heroin. Tyler had encountered Baxter on the street and, when advised that Baxter wanted "some good dope," sought to help him. Tyler first approached one man but eventually did not recommend buying from him "because there was a lot of dope on the street that was not good." Tyler next

approached Bennett. Baxter and Bennett then moved away from Tyler and completed the transaction; when Baxter eventually turned and walked back, Tyler asked him for some change. *United States v. Tyler*, 758 F.2d at 67. We held that this evidence, which showed merely that Tyler helped a willing buyer locate a willing seller, was insufficient to prove a conspiracy between Tyler and Bennett:

> Conspicuously absent from this scenario is any evidence that Tyler asked Baxter how much heroin he sought to purchase, that Tyler indicated that he had a specific source of heroin in mind for Baxter, that Tyler knew where to find Bennett or expected him to be in the area, or that Tyler had made any previous deals with Bennett.

Id. at 68-69.

The evidence here, viewed in the light most favorable to the government, was substantially more probative. Vargas had described both Mario and Nidia to Matos as his "associate[s]," and on June 20 he said Matos could speak to his male associate not only about money laundering but also about the 500 kilos of cocaine. Before introducing Matos to Mario on June 21, Vargas, himself plainly a narcotics trafficker, had discussed Matos's supposed importation of cocaine with Mario. Mario, at their June 21 meeting, explored with Matos the subject of narcotics purchases, asking how much cocaine Matos could bring in and plainly having one specific buyer – Nidia – in mind. Mario knew the size of Nidia's operation, the status of her inventory, and her immediate goals: thus, he told Matos that Nidia was "tapped out" and

would be interested in purchasing a large quantity of cocaine. Mario telephoned Nidia to tell her about Matos; and he urged Matos to go see her. This evidence provided a sufficient basis for a rational juror to infer beyond a reasonable doubt that Mario was well acquainted with Nidia's narcotics operation, that he had agreed, at least implicitly, to assist in that operation, and that he took steps to do so.

B. *Other Sufficiency Challenges*

Other sufficiency challenges include arguments by both Mario and Nidia that the evidence was insufficient to support their convictions for money-laundering conspiracy. These challenges are frivolous. Mario and Vargas were plainly coconspirators in a money-laundering operation. Vargas described Mario as his associate and introduced Mario to Matos in connection with the latter's professed desire to launder money. Mario confirmed Vargas's earlier representation as to Mario's fee. The evidence was ample that Vargas was a narcotics dealer, and Mario said that he regularly laundered $400,000 a week for Vargas. The evidence thus plainly showed a conspiracy at least between Mario and Vargas.

Vargas also had described Nidia as his associate. Nidia confirmed that she had discussed Matos's money-laundering needs with Vargas, and she advised Matos that Vargas would thereafter serve as her representative in dealing with Matos. Further, Nidia stated that before she could lower the fee for sending money abroad, she had to consult with another associate, whom she telephoned in Matos's presence. Finally, Mario's phone call

to Nidia permitted the inference that he was referring to her the large-bill conversions that he preferred not to handle. The evidence was thus ample to show that the conspiracy included the money-laundering arrangements at least between Nidia and Vargas, and between Nidia and another. *See, e.g., United States v. LoRusso,* 695 F.2d 45, 56 n.8 (2d Cir. 1982) (defendant's own statement referring to "his people" provided evidence that he had entered into agreements with others), *cert. denied,* 460 U.S. 1070 (1983).

C. *Vargas's Challenges to his Sentence*

Vargas contends that the sentencing court erred in calculating his offense level under the Guidelines. He contends principally that the court (a) should have found that he was incapable of purchasing as much as 50 kilograms of cocaine, and (b) should not have increased his offense level for obstruction of justice. His contentions are meritless.

Vargas argues that because he delivered only $295,000 for the transaction on August 9, the sentencing court, in light of the $10,000 per kilogram price, should have found that he was not capable of purchasing as much as 50 kilograms of cocaine, which would have cost $500,000. We reject this contention in light of the ample evidence of the ability of Vargas and his associates to purchase 50 kilograms or more. The record included evidence that when Vargas and Matos first met, Vargas showed him records of a 60-kilogram purchase Vargas had recently made. Further, Vargas consistently represented that his associates had at least $3 million available

for the purchase of cocaine, and he repeatedly attempted to persuade Matos to sell 500 kilograms partially on consignment, promising to pay for at least half of that amount on delivery. In addition, following his arrest, Vargas told the agents that $5 million would have been forthcoming within 20 days for 500 kilos of cocaine. The district court's finding that Vargas was capable of purchasing 50 or more kilograms of cocaine was not clearly erroneous.

Vargas's challenge to the two-level increase in his offense level under § 3C1.1 of the Guidelines for willful obstruction of justice, on the ground that his obstructive acts were not willful, has no greater merit. It is established that in order to enhance a defendant's sentence under Guidelines § 3C1.1, the sentencing court must find that "the defendant consciously act[ed] with the *purpose* of obstructing justice." *United States v. Stroud*, 893 F.2d 504, 507 (2d Cir. 1990) (emphasis in original); *see also United States v. Bonds*, 933 F.2d 152, 154 (2d Cir. 1991) (per curiam); *United States v. Thomas-Hamilton*, 907 F.2d 282, 285 (2d Cir. 1990); *United States v. Altman*, 901 F.2d 1161, 1164 (2d Cir. 1990). And we have ruled that mere flight from an arresting officer to avoid capture in the immediate aftermath of a crime does not of itself constitute an obstruction of justice within the meaning of that provision. *United States v. Stroud*, 893 F.2d at 508.

Vargas, however, did not merely flee to avoid capture in the immediate aftermath of the crime. He had already been apprehended and had agreed to cooperate in a controlled delivery to his second buyer. When the buyer appeared, Vargas yelled something, leapt over the hood of the surveilling agents' car, and attempted to escape.

When one of the agents caught him and pinned him to the ground, he grabbed the agent's gun. Though Vargas claims that his actions were prompted by fear, the court's finding that Vargas grabbed the officer's gun with the intent to obstruct justice was not clearly erroneous.

CONCLUSION

We have considered all of defendants' arguments on these appeals and have found them to be without merit. The judgments of conviction are affirmed.
